

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA**

AMERICAN CIVIL LIBERTIES UNION
OF NEBRASKA,

Plaintiff,

vs.

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY; UNITED STATES
DEPARTMENT OF HOMELAND SECURITY
OFFICE OF INSPECTOR GENERAL,

Defendants.

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

I. INTRODUCTION

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.* for declaratory and injunctive relief seeking to compel the release of records held by the Office of Inspector General (“OIG”) of the Department of Homeland Security (“DHS”) related to its investigation of mistreatment and civil rights abuses during a raid conducted by the U.S. Immigration and Customs Enforcement (“ICE”) in and around the city of O’Neill, Nebraska on August 8, 2018 (“Raid”).

2. On August 8, 2018, ICE raided several businesses in and around O’Neill Nebraska and detained over a hundred workers, many of whom were victims of acts of mistreatment and civil rights violations. Many of these detained workers were unaware of their constitutional right to remain silent, the right to an attorney, and protection against unlawful search and seizure. Those detained, which included at least two pregnant women, were transported to a detention center and left without adequate food or water.

3. In response to continuing public interest and controversy surrounding ICE’s alleged mistreatment and civil rights violations, and in particular due to the American Civil Liberties

Union of Nebraska's ("ACLU-NE") advocacy relaying information about ICE's mistreatment of detainees during the Raid, the OIG commissioned an investigation of the actions by ICE during and in relation to the Raid.

4. On June 16, 2020, Plaintiff ACLU-NE submitted a FOIA request via e-mail to OIG seeking disclosure of all records prepared, received, transmitted, collected and/or maintained by DHS that describe, refer, or relate to the Case Number I18-38382 regarding the Raid ("the Request"). (Ex. A, ACLU-NE June 16, 2020 FOIA Request). The Request was assigned Request Number 2020-IGFO-00147. (Ex. B, Acknowledgment Letter Dated June 19, 2020 from DHS-OIG)

5. ACLU-NE seeks the responsive documents to the Request to further public understanding of the contours and result of the OIG investigation and the potential civil rights violations that transpired during the Raid. The OIG investigation case file was assigned Case Number I18-38382. (Ex. C, E-mail from DHS Investigators Dated May 20, 2020).

6. To date, OIG has failed to respond to produce the documents sought in the Request in any way, let alone process the Request "promptly," as required by FOIA for all requests. *See* 5 U.S.C. § 552(a)(3)(A).

7. Plaintiff now files suit under FOIA for declaratory and injunctive relief, seeking the immediate release of the records within the contours of its Request.

II. JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

9. This Court has jurisdiction to grant declaratory and further proper relief pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. §§ 2201-2202 and FED. R. CIV. P. 57 and 65.

10. Venue lies in this District under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because Plaintiff ACLU-NE resides in this district.

III. PARTIES

11. Plaintiff ACLU-NE is a non-profit, nonpartisan 26 U.S.C. § 501(c)(4) organization dedicated to the constitutional principles of liberty and equity.

12. Plaintiff ACLU-NE is an affiliate of the American Civil Liberties Union (“ACLU”). The ACLU is committed to ensuring that the American government complies with the U.S. Constitution and laws in matters that affect civil liberties and human rights. The ACLU is also committed to the principles of government transparency and accountability and seeks to ensure that the American public is informed about the conduct of its government in matters that affect civil liberties and human rights.

13. The ACLU is “primarily engaged in disseminating information” within the meaning of the FOIA. 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii). Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU-NE’s work and are among its primary activities. *See ACLU v. U.S. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (quoting *EPIC v. Dep’t of Defense*, 241 F.Supp.2d 5, 11 (D.D.C. 2003)) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be primarily engaged in disseminating information); *see also Brennan Ctr. for Just. at NYU Sch. of L. v. Dep’t of Com.*, 498 F. Supp. 3d 87, 98 (D.D.C. 2020); *Protect Democracy Project, Inc. v. U.S. Dep’t of Def.*, 263 F. Supp. 3d 293,

298 (D.D.C. 2017); *Leadership Conf. on C.R. v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005).

14. The ACLU-NE does this work alone and with our national partners and allies. The ACLU-NE regularly issues press statements (and shares statements generated by the ACLU and other affiliates) and creates and shares reports, white papers, talking points, memos, fact sheets, and “know your rights” materials with community partners via its website and various social media platforms to educate the public about civil rights and civil liberties issues and government policies that implicate the same.

15. The ACLU-NE maintains a principal place of business in Lincoln, Nebraska.

16. Defendant OIG is a component of DHS and an agency within the meaning of 5 U.S.C. § 552(f).

17. Defendant OIG was established concurrently with DHS in 2002 whose purpose is to provide independent oversight and promote integrity and accountability within DHS. The OIG is headquartered in Washington, D.C.

18. Defendant DHS is a Department of the Executive Branch of the United States government and an agency within the meaning of 5 U.S.C. § 552(f)(1). DHS is headquartered in Washington, D.C.

IV. STATEMENT OF FACTS

O'Neill, Nebraska ICE Raid

19. On August 8, 2018, ICE conducted worksite raids at numerous businesses operations in or around O'Neill, Nebraska, including meat processing plants, a potato factory, a hydroponic tomato greenhouse, and a cattle company.¹

20. O'Neill, Nebraska is located in north central Nebraska and has a population of approximately 3,700 people.²

21. ICE arrested at least 118 individuals during the Raid, one of the agency's largest raids to take place at a worksite in years.³ An additional 17 individuals were arrested for the exploitation of the arrested workers.⁴

22. The Raid was allegedly part of a 15-month investigation by ICE,⁵ yet reports by those detained demonstrated the lack of preparedness by ICE.⁶

23. Representatives of the ACLU-NE and other nonprofit organizations provided rapid legal response support in the aftermath of the Raid and spoke to many individuals who were detained and later released.⁷ The ACLU-NE provided a recount of the individuals' troubling

¹ Hamed Aleaziz, *How A Massive ICE Raid Changed Life In One Small American Town*, BuzzFeed News, (Oct. 23, 2018, 8:01AM), <https://www.buzzfeednews.com/article/hamedaleaziz/immigration-ice-oneill-nebraska-raid-workers-trump>.

² Fred Knapp, *O'Neill: Mixed Emotions One Year After ICE Raids*, Nebraska Public Media, (Aug. 8, 2019, 6:45 AM), <https://nebraskapublicmedia.org/en/news/news-articles/oneill-mixed-emotions-one-year-after-ice-raids/>.

³ Aleaziz, *supra* note 1.

⁴ Knapp, *supra* note 2; Paul Hammel, *Raids rattle O'Neill: Workers detained as feds target alleged conspiracy to exploit illegal labor*, OMAHA WORLD HERALD, (Aug. 9, 2018), https://omaha.com/news/crime/raids-rattle-o-neill-workers-detained-as-feds-target-alleged-conspiracy-to-exploit-illegal-labor/article_df881c1a-e399-523e-86b2-36bf614b3351.html#tncms-source=login.

⁵ Don Walton, *ICE sweep through Nebraska targets immigrant exploiters*, LINCOLN JOURNAL STAR, (May 29, 2020), https://journalstar.com/news/state-and-regional/nebraska/ice-sweep-through-nebraska-targets-immigrant-exploiters/article_9ba67303-c161-5fbc-8c4c-8acfb5bc00bd.html.

⁶ Rose Godinez, *ICE vs. Nebraska Nice: An Account of the Immigration Enforcement Raid in O'Neill*, ACLU of Nebraska, (Aug. 15, 2018, 2:45 PM), <https://www.aclunebraska.org/en/news/ice-vs-nebraska-nice-account-immigration-enforcement-raid-oneill-1>.

⁷ *Id.*

reports on its website and social media, which included allegations of potential civil rights violations by ICE during the Raid.⁸ Specifically, many of workers detained during the Raid, including two pregnant women, reported issues regarding the lack of access to food and water in nearly 100-degree weather for approximately 12 hours of their detention by ICE.⁹ Workers reported a lack of air conditioning and extreme temperatures while on ICE's bus transporting the detainees during the two-hour drive from O'Neill to Grand Island, Nebraska. Finally, workers reported a general lack of adequate interpretation and translation by ICE agents during interviews which impeded their ability to exercise their constitutional rights.¹⁰

24. In response to the ACLU-NE's report, representatives of the OIG informed the ACLU-NE it would conduct an investigation of the alleged civil rights violations. OIG representatives interviewed affected individuals on October 18, 2018 and October 19, 2018. The ACLU-NE participated in at least two of the interviews held on those dates.

25. Disclosure of the results of the investigation into the Raid is critical to a full and fair public understanding and debate about ICE's use of worksite raids. In particular, release of the investigation is necessary to assess whether any action by DHS or other government entities was taken to address the violations alleged by those detained.

26. OIG commissioned the investigation, has completed the investigation and is in control over the documents requested. (Ex. C.) Upon information and belief, OIG now has sole authority to use and dispose of the documents related to the investigation. *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Plaintiff's FOIA Request

27. On June 16, 2020, Plaintiff submitted their Request to the OIG via e-mail to foia.oig@oig.dhs.gov. (Ex. A.)

28. The ACLU-NE sought a waiver or reduction of fees because disclosure of the requested information is “in the public interest and it is likely to contribute significantly to public understanding of the operations or activities of the government,” and the disclosure of the information is “not primarily in the commercial interest of the requester.” *See* 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 6 C.F.R. § 5.11(k)(1).

29. Plaintiff also sought a waiver of search and review fees on the grounds that the ACLU-NE qualifies as a “representative of the news media” and that the documents related to the concluded investigation is not sought for commercial use. *See* 5 U.S.C. § 552(a)(4)(A)(ii); *see also* 6 C.F.R. § 5.11(d)(1).

30. Plaintiff then received an acknowledgment letter dated June 19, 2020, providing that OIG had received the Request on June 16, 2020. (Ex. B.)

31. In the same letter, OIG stated it “anticipate[d] responding to [Plaintiffs’] request within 20 business days.” *Id.* OIG assigned Plaintiff’s FOIA request tracking number 2020-IGFO-00147. *Id.*

32. As to Plaintiff’s fee waiver request, OIG communicated it had “not yet made a decision on Plaintiff’s request for a fee waiver.” *Id.*

33. On December 18, 2020, Plaintiff e-mailed foia.oig@oig.dhs.gov for an update on the disclosure of the records related to the Request. (Ex. D, E-mail to FOIA-OIG on December 18, 2020). Plaintiff did not receive a response to its inquiry.

34. On June 30, 2021, Plaintiff e-mailed foia.oig@oig.dhs.gov for an update on the disclosure of the records related to the Request. (Ex. E, E-mail to FOIA-OIG Dated June 30, 2021). Plaintiff did not receive a response to its inquiry.

35. On February 8, 2022, Plaintiff e-mailed foia.oig@oig.dhs.gov for an update on the disclosure of the records related to the Request. (Ex. F, E-mail to FOIA-OIG Dated February 8, 2022). Plaintiff did not receive a response to its inquiry.

36. On or about March 23, 2022, Plaintiff left a voicemail at the number referenced in the DHS OIG acknowledgment letter (202.981.6100) and e-mailed foia.oig@oig.dhs.gov (Ex. G, E-mail to FOIA-OIG Dated March 23, 2022). Plaintiff did not receive a response to its inquiries.

37. More than two years later, Plaintiff has heard nothing further from OIG.

38. The twenty-day statutory period to respond to Plaintiff's request has elapsed with no response or determination from DHS or OIG. *See* 5 U.S.C. (a)(6)(A)(i).

39. The DHS and OIG have neither released the requested records nor explained their failure to do so.

40. Because Defendants have failed to respond to the Plaintiff's Request within the applicable statutory and regulatory periods, any administrative remedies are deemed exhausted. 5 U.S.C. § 552(a)(6)(C)(i).

41. Plaintiff faces ongoing and irreparable harm by Defendants' failure to provide a timely response to their Request.

V. CLAIMS

FIRST CLAIM

Violation of the Freedom of Information Act, 5 U.S.C. § 552: Failure to Conduct an Adequate Search for Responsive Records

42. Plaintiff incorporates each and every allegation contained in the preceding paragraphs.

43. Defendants have custody and control over the records Plaintiff seeks to make publicly available under 5 U.S.C. § 552(a)(2); 6 C.F.R. § 5.4 *et seq.* (Ex. C).

44. Defendants are obligated under 5 U.S.C. § 552(a)(3) to conduct a reasonable search for records responsive to Plaintiff's Request. Defendants failed to conduct such a search.

45. Defendants possess the records Plaintiff seeks and has a legal right to obtain such records. No legal basis exists for Defendants' failure to search such records.

46. Defendants' failure to conduct a reasonable search for records responsive to Plaintiff's Request violates 5 U.S.C. § 552(a)(3).

SECOND CLAIM

Violation of the Freedom of Information Act, 5 U.S.C. § 552: Failure to Make a Determination and Promptly Produce Responsive Documents

47. Plaintiff incorporates each and every allegation contained in the preceding paragraphs.

48. Defendants are obligated under 5 U.S.C. § 552(a)(6)(A)(i) to make a determination on Plaintiff's Request within twenty business days. In unusual circumstances, Defendant may invoke an extension no longer than ten days. 5 U.S.C. § 552(a)(6)(B)(i).

49. Defendants have failed to make a determination within thirty days, the maximum amount of time permitted under the statute.

50. Defendants are obligated to produce responsive records under 5 U.S.C. § 552(a)(3)(A)(i).

51. Defendants have failed to promptly produce responsive records.

52. Defendants' failure to make a determination within the statutory time frame and produce responsive records promptly violates 5 U.S.C. §§ 552(a)(3)(A), (a)(6)(A)(i), and (a)(6)(B)(i).

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that the Court:

- a. Order Defendants to conduct a search for records responsive to the Request filed by Plaintiffs under 5 U.S.C. § 552(a)(3);
- b. Order Defendants to produce all records responsive to Plaintiff's Request promptly or on an expedited schedule established by the Court;
- c. Enjoin Defendants from improperly withholding records;
- d. Declare that Defendants' failure to conduct an adequate search violates 5 U.S.C. § 552(a)(3);
- e. Declare that Defendants' failure to promptly produce records responsive to Plaintiff's Request violates 5 U.S.C. §§ 552(a)(3)(A), (a)(6)(A)(i), and (a)(6)(B);
- f. Award Plaintiff reasonable attorneys' fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E) and any other applicable statute or regulation; and
- g. Grant such other relief as the Court may deem just, equitable, and appropriate.

Dated this 8th day of August, 2022.

American Civil Liberties Union
Foundation of Nebraska, Plaintiff

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